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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1513

MICHAEL J. HOWLETT, SECRETARY OF STATE OF ILLINOIS,

Appellant,

vs.

DENNIS N. LOVE,

Appellee.

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

BRIEF AND ARGUMENT FOR APPELLANT

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In The

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October Term, 1975

No. 75-1513

MICHAEL J. HOWLETT, SECRETARY OF STATE OF ILLINOIS,

Appellant,

vs.

DENNIS N. LOVE,

Appellee.

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

BRIEF AND ARGUMENT FOR APPELLANT

OPINION BELOW

The opinion of the United States District Court for the Northern District of Illinois is reproduced in full in Appendix A.

JURISDICTION

Appellee, Dennis N. Love, instituted this class action against the appellant under 28 U.S.C., §§ 1331, 1343, 2201 and 2202 and 42 U.S.C., § 1983 challenging section 6-206(a)(3) of the Illinois Motor Vehicle Code (Ill. Rev. Stat. 1975, ch. 95 1/2, § 6-206(a)(3)), on the ground that it denies appellee due process of law in violation of the fourteenth amendment to the United States Constitution. Section 6-206(a)(3), as applied through administrative rules, and with reference to related statutory provisions, authorizes the Secretary of State of Illinois to suspend or revoke a driver's license without preliminary hearing, based on the driver's traffic convictions and the number of points the driver has accumulated on those convictions. Appellee alleged this section was unconstitutional both on its face and as applied, and sought declaratory and injunctive relief.

A three-judge court, convened pursuant to 28 U.S.C., §§ 2281 and 2284, entered a permanent injunction granting appellee the relief sought on January 20, 1976. The district court held that the statute denied appellee adequate notice and hearing in violation of the fourteenth amendment to the United States Constitution.

Defendant, Michael J. Howlett, filed his Notice of Appeal on February 18, 1976. Defendant has invoked the jurisdiction of this Court to review the decision of the three-judge district court by virtue of 28 U.S.C. § 1253. This Court noted probable jurisdiction on October 4, 1976.

QUESTION PRESENTED

Whether section 6-206(a)(3) of the Illinois Motor Vehicle Code (Ill. Rev. Stat. 1975, ch. 95 1/2, § 60-206(a)(3)), which authorizes the Secretary of State of Illinois to suspend or revoke a driver's license without preliminary hearing based on the number of traffic violations for which the driver has been convicted and the number of "points" accumulated on those convictions, affords the driver due process of law.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

U. S. Const., amend. XIV;

Ill. Rev. Stat., 1975, ch. 95 1/2, § 6-206;

Rule 6-206, promulgated under the Illinois Vehicle Code.

STATEMENT OF THE CASE

The appellee, Dennis N. Love, (hereinafter referred to as "plaintiff"), instituted this class action to enjoin appellant-defendant, Michael J. Howlett, (hereinafter referred to as the "Secretary of State"), from revoking the plaintiff's driver's license, and the licenses of others similarly situated, pursuant to an alleged unconstitutional provision of the Illinois Motor Vehicle Code. Section 6-206(a)(3) of the Code (Ill. Rev. Stat. 1975, ch. 95 1/2, § 6-206(a)(3)) authorizes the Secretary of State to suspend or revoke the license of any driver without preliminary hearing based on the information contained in the driver's record.

On May 28, 1975, the Secretary of State mailed the plaintiff a notice of an order revoking his driver's license, effective June 6, 1975. Plaintiff thereupon filed the instant suit in the district court, which on June 6th granted plaintiff's motion for a temporary restraining order, pending a full hearing on the issues in the case. The temporary restraining order was conditioned on plaintiff's application for a hardship license, which was subsequently granted.

In his complaint, filed June 5, 1975, plaintiff challenges the constitutionality of section 6-206(a)(3) of the Code, pursuant to which his license had been revoked, and seeks to enjoin the enforcement of this statute. Plaintiff asserts that this section violates the due process clause in that it denies plaintiff a hearing prior to revocation.

Section 6-206(a)(3) authorizes the Secretary of State to revoke or suspend the license of any person without preliminary hearing upon a showing by the licensee's

record that such person has been repeatedly convicted of violations which indicate the lack of ability to exercise ordinary and reasonable care or indicate disrespect for traffic laws and the safety of others. Following revocation, the licensee is entitled to a hearing under section 2-118 of the Code. Ill. Rev. Stat. 1975, ch. 95 1/2, § 2-118.

Rule 6-206(a)(3) of the Rules and Regulations under the Illinois Vehicle Code, promulgated by the Secretary of State pursuant to section 2-104 of the Code (Ill. Rev. Stat. 1975, ch. 95 1/2, § 2-104 of the Code (Ill. Rev. Stat. 1975, ch. 95 1/2, § 2-104), provides that a driver who has had his license suspended three times within a ten-year period shall have his license revoked. Section 6-206(a)(2) of the Code and Rule 6-206(a)(2) authorize the Secretary of State to suspend a license without preliminary hearing upon the licensee's conviction for three traffic offenses within a 12-month period. The length of the suspension is governed by the number of points a driver has accumulated on those convictions, each type of offense being assigned a certain number of points according to its severity. Certain minor offenses (Ill. Rev. Stat. 1973, ch. 95 1/2, § 6-204(a)(2)) do not count toward suspension and have no points assigned to them. Rule 6-206 is reprinted in relevant part at Appendix C.

The plaintiff's driving record, reported from 1968, shows numerous convictions for traffic violations. Plaintiff's license was first suspended on November 4, 1969, for a period of two months, pursuant to section 6-206(a)(2) of the Code, and Rule 6-206(a)(2) (three convictions in 12-month period). His license was suspended a second time on March 17, 1970, for a period of two months upon his conviction for operating a vehicle while his license was suspended, pursuant to section 6-303(b) of the Code (Ill. Rev. Stat. 1975, ch. 95 1/2, § 6-303(b)), which requires the Secretary to take such action.

On March 31, 1975, the plaintiff was convicted of his third speeding violation within a seven-month period. The Secretary had sent plaintiff a letter warning that a third conviction would result in the loss of his driving privileges on March 27th. Thereafter, the plaintiff's license was revoked pursuant to section 6-206(a)(3) of the Code and Rule 6-206(a)(3) (three suspensions within a ten-year period). The district court found it immaterial that the Secretary had not taken the intermediate step of suspending plaintiff's license for his three convictions in one year, pursuant to section 6-206(a)(2) of the Code and Rule 6-206(a)(2) (Appendix B).

The plaintiff's complaint alleges that a revocation under section 6-206(a)(3) is a denial of due process of law in that it fails to provide adequate notice and hearing on the issue of such revocation prior to the actual revocation. A second count alleges that the statute is unconstitutionally vague in violation of due process of law because the statute fails to adequately inform the licensee of the standards used to determine if revocation is applicable.

Plaintiff's request for a hearing by a three-judge panel on the issue of the constitutionality of section 6-206(a)(3) was granted on June 9, 1975. The three-judge court entered its Memorandum Opinion and Order on January 20, 1976, on cross motions for summary judgment. The court held that plaintiff's right to procedural due process was denied by the practice of the Secretary under section 6-206(a)(3), because a separate hearing on the issue of revocation was not provided prior to the actual issuance of a revocation order. The court found it unnecessary to rule on plaintiff's vagueness challenge to the statute in view of its holding on the procedural due process issue. The court also entered a separate injunction order, *nunc pro tunc*, as of January 20, 1976, on

April 13, 1976, clarifying its original order. The latter order concludes that section 6-206(a)(3) is unconstitutional, and enjoins the Secretary from enforcing that section. The third member of the panel, the Honorable Richard W. McLaren, United States District Court, did not sign this order because he was deceased.

The plaintiff's class was never certified.

SUMMARY OF ARGUMENT

The Illinois statutory scheme for suspension and revocation of driving privileges without a prior hearing, based upon convictions for motor vehicle violations, comports with the principles of due process of law.

In *Bell v. Burson*, 402 U.S. 535, 29 L. Ed. 2d 90 (1971), this Court decided that the due process clause of the Fourteenth Amendment requires the state to grant an individual driver a hearing to determine whether a reasonable possibility of a judgment against him exists as a result of an accident before a driver's license or motor vehicle registration could be suspended under the state's financial responsibility law.

The Illinois statutory scheme for suspending or revoking driver's licenses affords individuals due process of law because each driver has an opportunity to contest fault on the underlying convictions. *Wright v. Malloy*, 373 F. Supp. 1011 (D. Va. 1974), aff'd. 95 S. Ct. 297, 42 L. Ed. 2d 261 (1974); *Scott v. Hill*, 407 F. Supp. 301

(E.D. Va. 1976). A further independent hearing is not necessary. The only benefit to the individuals which an additional hearing could serve would be to eliminate the possibility of administrative error in calculations or mistaken identity. Weighing this benefit against the strong interest of the State in protecting the general welfare by the speedy removal of dangerous drivers from the highways, it is clear that the State should not be required to grant such individuals a further hearing.

Furthermore, even assuming, *arguendo*, that due process would require an additional administrative hearing prior to suspension or revocation, repeated convictions for motor vehicle violations constitutes an emergency situation which obviates the necessity for such a hearing. *Goss v. Lopez*, 419 U.S. 565, 42 L. Ed. 2d 725 (1975).

ARGUMENT

THE REVOCATION OR SUSPENSION OF A DRIVER'S LICENSE WITHOUT A PRELIMINARY HEARING, BASED UPON THE NUMBER OF TRAFFIC VIOLATIONS FOR WHICH A DRIVER HAS BEEN CONVICTED, COMPORTS WITH THE PRINCIPLES OF DUE PROCESS OF LAW.

The due process clause of the Fourteenth Amendment protects individuals from unreasonable and unjustifiable state deprivations of personal liberty. *Board of Regents v. Roth*, 408 U.S. 564, 571-72, 33 L. Ed. 2d 548 (1972). Although an exact description of what constitutes such a protectible "liberty" has never been fully articulated, it has long been held that such liberty encompasses much more than the simple right to be free from unwarranted bodily restraint. *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 81 L. Ed. 703 (1937); *Meyer v. Nebraska*, 262 U.S. 390, 67 L. Ed. 1042 (1923). In *Wall v. King*, 206 F. 2d 878 (1st Cir. 1953), *cert. den.* 346 U.S. 915, 98 L. Ed. 411 (1953), the Court held that the personal liberty provision of the due process clause covered the use of a motor vehicle:

> We have no doubt that the freedom to make use of one's own property, here a motor vehicle, as a means of getting about from place to place, whether in pursuit of business or pleasure, is a "liberty" which under the Fourteenth Amendment cannot be denied or curtailed by a state without due process of law. (206 F. 2d at 882).

However, the interpretation and application of the due process clause does not lend itself to the promulgation of an inflexible procedure universally applicable to every situation. Due process does not require a prior adversary hearing in all cases in which a significant private interest is jeopardized by governmental regulatory action.

Cafeteria Workers v. McElroy, 367 U.S. 886, 895, 6 L. Ed. 2d 1230 (1961); *Bourjois, Inc. v. Chapman*, 301 U.S. 183, 81 L. Ed. 1027 (1937). Due process of law, within administrative procedures, requires only the opportunity to be heard "at a meaningful time and in a meaningful manner." *Goldberg v. Kelly*, 397 U.S. 254, 25 L. Ed. 2d 287 (1970). The required degree of procedural safeguards applicable to administrative proceedings "varies directly with the importance of the private interest affected and the need for and usefulness of the particular safeguard in the given circumstances . . ." *Frost v. Weinburger*, 515 F. 2d 57, 66 (1975) (citing *Arnett v. Kennedy*, 416 U.S. 134, 40 L. Ed. 2d 15 (1974)).

Any analysis of a purported deprivation of procedural due process must, therefore, necessarily begin by first identifying the particular private and governmental interests involved, and then weighing the relative importance of these interests. *Goldberg v. Kelly, supra*, 397 U.S. at 263.

> The governmental interests on the one hand and the individual interests on the other must be balanced and the procedures established must be considered in the light of various questions which courts have postulated from time to time: How was the individual likely to be hurt? What governmental interest is affected, if at all, by extending procedural safeguards to cover the challenged action? *Gonzales v. Freeman*, 334 F. 2d 570, 579-80 (D.C. Cir. 1964).

Here, the plaintiff's interest in not having his driver's license revoked pursuant to section 6-206(a)(3) of the Illinois Code must be balanced against the strong interest of the State of Illinois in the protection of the health and safety of its citizens. Specifically, the interest of the plaintiff served by a pre-revocation hearing must be

weighed against the State's interest in the speedy removal of a safety hazard from its highways.

Unquestionably, the State has the right to regulate the use of its highways and to limit their use to those who do not present a risk to the public health and safety. *Bibb v. Navajo Freight Lines*, 359 U.S. 520, 3 L. Ed. 2d 1003 (1959). In *Haswell v. Powell*, 38 Ill. 2d 161, 230 N.E. 2d 178 (1967), *app. dismd.* 88 S. Ct. 1408, 20 L. Ed. 2d 250, the Illinois Supreme Court held that the suspension of a driver's license, without a preliminary hearing, after conviction of three moving violations, was a reasonable exercise of the police power for the safety of the public:

> Whether the operation of a motor vehicle is termed a right or a privilege, we think it clear that such operation is subject to regulation under the police power. (citation omitted) We conceived the issue to be whether the statute under attack is a reasonable exercise of this power. Considering the ever-increasing death toll on our highways we view the suspension of a driver's license after conviction of three moving violations to be a reasonable exercise of the police power for the safety of persons on the highway. (230 N.E. 2d at 180)

A license suspension for driving while intoxicated was upheld without a preliminary hearing in *Wall v. King*, 206 F. 2d 878 (1st Cir. 1958), *cert. den.* 346 U.S. 915, 98 L. Ed. 411. The Court noted, 206 F. 2d 883,

> * * * We have no doubt that these provisions of law are reasonable regulations in the interest of safeguarding lives and property from highway accidents. The incidental hardship upon an individual motorist, in having his license suspended pending investigation and review, must be borne in deference to the greater public interest served by the statutory restriction.

State laws allowing the revocation or suspension of driving privileges without prior notice and hearing have frequently been sustained against constitutional attacks on their validity. See: *Spurbeck v. Statton*, 106 N.W. 2d 660 (Iowa 1960) (pre-suspension hearing not required where licensee had committed an offense for which mandatory revocation of license was required upon conviction. 106 N.W. 2d at 664-65); *Jones v. Kirkman*, 138 So. 2d 513 (Fla. 1962) (pre-suspension hearing not required under a "point-system" statute. 138 So. 2d at 515); *Blydenburg v. David*, 413 S.W. 2d 284 (Mo. 1967) (prior notice and hearing not required before suspension or revocation under State's "implied consent" law. 413 S.W. 2d at 290. Several courts have held that suspension or revocation of driving privileges for driving while under the influence of intoxicating liquor was permissible without prior notice or hearing: *State ex rel. Ralston v. State Department of Licenses*, 60 Wash., 2d 535, 374 P. 2d 571, 573 (1962); *Hough v. McCarthy*, 59 Cal. 2d 273, 353 P. 2d 276, 284 (1960); *Cook v. Bright*, 208 Cal. App. 2d 98, 102, 25 Cal. Rptr. 116 (1962).

It is submitted that the Illinois Code (Section 6-206(a)(3)) and the Secretary's practices under that section provide due process, and that plaintiff in the instant case has had an opportunity to be heard appropriate to the nature of the case. Section 6-206(a)(3) provides:

> (a) The Secretary of State is authorized to suspend or revoke the license or permit of any person without preliminary hearing upon a showing by his records or other sufficient evidence that such person:
>
> * * *
>
> 3. Has been repeatedly involved as a driver in motor vehicle collisions or has been repeatedly convicted of offenses against laws and ordinances

> regulating the movement of traffic, to a degree which indicates lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle or disrespect for the traffic laws and the safety of other persons upon the highway:

This section must be viewed in light of related statutory provisions and the rules and regulations promulgated by the Secretary of State.

Section 6-206(a)(2) of the Code authorizes the Secretary to suspend the license of a driver without a preliminary hearing based upon a showing by his records that the individual has been convicted of three traffic violations within a 12-month period "so as to indicate the disrespect for the traffic laws and a disregard for the safety of other persons on the highway" (See: Appendix B). Under Rule 6-206(a)(2), the Secretary may suspend the license of a driver convicted of three violations within a 12-month period, with the length of the suspension dependent upon the number of points the driver has accumulated on those convictions (See: Appendix C). Rule 6-206(a)(3) provides that a "person who has been suspended thrice within a 10 year period shall be revoked". Since this statutory scheme affords a driver an opportunity for a hearing on the merits of each violation on which his suspension is based, the Illinois Statute effects a valid constitutional accommodation between the conflicting interests of the State and the licensee.[1]

---

[1] It should be noted that after recocation under § 6-206(a)(3), Illinois licensees have a right to a hearing pursuant to Chapter 95 1/2, § 2-118, which provides:

> (a) Upon the suspension, revocation or denial of the issuance of a license, permit or registration or certificate of title under this Act of any person the Secretary of State shall immediately notify such person in writing and upon

(Footnote continued on following page)

In *Ratlif v. Lampton*, 32 Cal. 2d 226, 195 P. 2d 792 (1948) the Court noted that in situations where provisions make it mandatory upon the Department to revoke or suspend licenses upon receipt of a record showing that the individual was convicted of specified offenses, "the facts have already been determined in the criminal proceeding" (195 P. 2d 793). Furthermore, in *Cadieux v. Macduff*, 1 App. Div. 2d 360, 150 N.Y.S. 2d

[1] *continued*

his written request shall afford him an opportunity for a hearing as early as practical within 20 dyas after receipt of such request, in either the County of Sangamon or the County of Cook as such person may specify, unless both parties agree that such hearing may be held in some other county.

(b) At any time after the suspension, revocation or denial of a license, permit or registration or certificate of title of any person as hereinbefore referred to, the Secretary of State, in his discretion and without the necessity of a request by such person, may hold such a hearing, upon not less than 10 days notice in writing, in the Counties of Sangamon or Cook or in any other county agreed to by the parties.

(c) Upon any such hearing, the Secretary of State, or his authorized agent may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books and records and may require an examination of such person. Upon any such hearing, the Secretary of State shall either rescind, or, good cause appearing therefore, continue, change or extend the Order of Revocation or suspension, as the case may be.

(d) All hearings shall be held before the Secretary of State or before such persons as may be designated by the Secretary of State and appropriate records of such hearings shall be kept.

(e) The action of the Secretary of State in suspending, revoking or denying any registration, license or permit or certificate of title shall be subject to judicial review in the Circuit Court of Sangamon County or in the Circuit Court of Cook County and the provisions of the "Administrative Review Act", approved May 8, 1945, and all amendments and modifications thereto, and the rules adopted pursuant thereto, are hereby adopted and shall apply to and govern every action for the judicial review of final acts or decisions of the Secretary of State hereunder.

138 (1956) *app. dismd.*, 1 N.Y. 2d 827, 135 N.E. 2d 717 (1956) the Court found that where the Commissioner of Motor Vehicles determined that a motorist's conviction for reckless driving justified the revocation of his license, the fact that the legislature provided that no hearing was necessary did not deprive him of due process, stating:

> * * * Such a procedure does no violence to "due process" because the petitioner has had a court hearing upon his conviction and the statute expressly authorizes a court review of the Commissioner's acts if they are claimed to be arbritary or an improper exercise of discretion, . . . (150 N.Y.S. 2d 140)

In *Bell v. Burson*, 402 U.S. 535, 29 L. Ed. 2d 90 (1971) this Court held that once a driver's license was issued by the State, it was not to be taken away without the procedural due process required by the Fourteenth Amendment (402 U.S. at 535), and that a prior hearing must precede a revocation or suspension of driving privileges where the individual's interest in avoiding the particular state action outweighs the countervailing governmental interest. This Court determined that the sole purpose of the provisions of the law under scrutiny in *Bell* was to provide security for a judgment claimant (402 U.S. at 540). Under such circumstances, the State's interest in protecting the claimant from the possibility of an unrecoverable judgment was insufficient to justify the burden placed upon the licensee where no reasonable possibility of a judgment against him existed (402 U.S. at 542). Therefore, this Court found the provisions unconstitutional. The crucial factor in the *Bell* decision was that prior to the revocation of a license under Georgia's financial responsibility statute, the licensee was not accorded a hearing on the issue of fault or liability for the accident which resulted in the revocation (29 L. Ed. 2d at 96).

The practice of the Illinois Secretary of State conforms to the dictates of *Bell v. Burson*. It should be noted first that the State's interest here, in protecting the public from an unsafe driver with repeated convictions for motor vehicle violations, is much stronger than the State's interest in *Bell*, in protecting the public from a financially irresponsible driver. Secondly, a separate hearing to determine fault is not required here because each time a licensee is convicted of a violation which counts toward his suspension and which results in an assignment of points, the licensee is accorded a full opportunity to be heard on the issue of fault. It is only when the driver has been so convicted that the Secretary is authorized to revoke or suspend. Thus, the hearings that a driver is afforded on his violations are clearly more than adequate to support a revocation or suspension. As this Court noted in *Bell*,

> Clearly, however, the inquiry into fault or liability requisite to afford the licensee due process need not take the form of a full adjudication of the question of liability . . . [W]e hold that procedural due process will be satisfied by an inquiry limited to the determination whether there is a reasonable possibility of judgments in the amount claimed being rendered against the licensee. (29 L. Ed. 2d at 95).

Judged by the requirements of *Bell*, the Illinois procedure clearly affords licensees an adequate opportunity to be heard on the issues underlying suspension or revocation because the question of their liability has already been fully adjudicated.

Subsequent to this Court's decision in *Bell v. Burson*, several jurisdictions have upheld suspension or revocation of driving privileges without a preliminary hearing. In *Cox v. Hjelle*, 207 N.W. 2d 266 (N.D. 1973) the Supreme Court of North Dakota held that a defendant who had been convicted of four speeding offenses within

a two-year period was not denied due process by a license suspension without a further hearing.

> In the case under consideration on this appeal, however, the licensee was not deprived of his rights without a hearing. In each of the cases in which he was charged with a traveling violation, he was given the opportunity of being heard. He deliberately chose not to appear and avail himself of such opportunity. However, having had the opportunity for hearing in each of the four cases, he was not denied due process as guaranteed under the Fourteenth Amendment.

See also: *State v. Sinner*, 207 N.W. 2d 495 (N.D. 1973).

A statute permitting the Department of Highway Safety and Motor Vehicles to revoke a driver's license for five years upon the Department's finding that a driver was a habitual offender was held constitutional by the Supreme Court of Florida in *Zarsky v. State of Florida*, 300 So. 2d 261 (Fla. 1974). See also: *Abraham v. State*, 301 So. 2d 11 (Fla. 1974) *app. dismd.* 420 U.S. 941, 43 L. Ed. 2d 420.

The Supreme Court of Nebraska upheld a statutory scheme very similar to the one involved in the instant case in *Stauffer v. Weedlun*, 188 Neb. 105, 195 N.W. 2d 218 (1972).

In so holding, the Court stated; 195 N.W. 2d at 223:

> We think that in a very real sense the essential facts have been determined in the judicial proceedings in connection with each conviction. In a very real sense the Director acts only ministerially. The result—the revocation—flows from the operation of the statute upon the already judicially determined facts, that is, the series of convictions of traffic offenses. Of these the motorist already has knowledge. Of their effect point-wise he is charged

by law with knowledge just as with any other case of knowledge of the law. These circumstances do, in our opinion, make the procedures applicable to revocation of a driver's license for an accumulation of points for traffic offense conviction clearly distinguishable from revocation under the financial responsibility law as in Bell v. Burson, *supra.*

The court continued, 195 N.W. 2d at 224:

> Under the Nebraska scheme the Director acts ministerially. The likelihood of error is small. The compelling public interest in removing from the highways those drivers whose records demonstrate unsafe driving habits outweighs the need for notice and hearing prior to the order to protect the individual against mistake. In this connection the matter must be viewed not as an isolated case but in the collective aspect, that is, the removal of many such drivers from the highways.

The suspension of a driver's license, without a pre-suspension hearing, under Vermont's Financial Responsibility Act was upheld in *Wright v. Malloy*, 373 F. Supp. 1011 (D. Va. 1974), *aff'd without opinion*, 95 S. Ct. 297, 42 L. Ed. 2d 261 (1974). Vermont's statutory scheme provided a pre-suspension hearing for drivers who were allegedly at fault in an automobile accident but who were not convicted of a motor vehicle violation and for those drivers who were convicted of a motor vehicle violation that did not indicate fault. Only when the driver was convicted of a motor vehicle violation indicating fault for the accident in which he was involved did the statute provide for no independent hearing (373 F. Supp. at 1018). The Court found that such a procedure afforded drivers due process,

> * * * It is reasonable to assume that the legislature felt that a further hearing was unnecessary when the opportunity to contest fault was afforded the driver by the nature of the plea which

> he entered to the charges brought against him. A plea of not guilty would earn such an operator the right to be heard by the court with undoubted procedural and substantive due process rights. On the other hand, a plea of guilty or nolo contendere to the violation indicates that the operator either declines to contest the question of fault or that he indeed was at fault to some degree which he is willing to admit. *Bell* does not require that a hearing be held in all cases in which proof of financial responsibility is sought by the Commissioner but merely that there is a forum where the motorist may have the question of probability of fault determined before he is made to suffer suspension of his license for failing to establish his financial responsibility. (373 F. Supp. at 1018)
>
> * * *
>
> We hold that the procedural due process test laid down in *Bell* is satisfied by the opportunity granted the driver to contest his fault by contesting the violation with which he is charged and that a determination by the defendant Commissioner of Motor Vehicles that there is a reasonable possibility of a judgment being rendered against the licensee may be based upon the fact that the fault of the licensee has been determined by conviction upon the motor vehicle violation with which he was charged. (373 F. Supp. at 1019)

Further, in *Scott v. Hill*, 407 F. Supp. 301 (E.D. Va. 1976) the Court held that a failure to provide the plaintiff with notice of a proposed revocation of his driving privileges did not operate to deprive him of due process where three opportunities for a hearing had been provided on the underlying convictions. Rejecting plaintiff's contention that *Bell v. Burson* required a pre-revocation hearing, the Court declared,

> Nor is this a *Bell v. Burson* case. There the infirmity was that the licensee had been deprived of his operator's license without his ever having an oppor-

tunity for a hearing. Here plaintiff had three opportunities for a hearing on the underlying convictions and, as above noted, the underlying convictions are not void on the basis of any federal right or immunity. Loss of an operator's license is not loss of a liberty. *Ferguson v. Gathright*, 485 F.2d 504, 506 (4th Cir. 1973). As was suggested in *Bell, supra*, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d at 96-97, a State may base an operator's license suspension on the outcome of a civil action for damages brought by the injured party. If this be a permissible procedure it seems equally permissible, so far as federal law is concerned, for Virginia to base its suspension upon *three* criminal drunk driving convictions. (407 F. Supp. at 304).

Similarly, under the Illinois statutory scheme the essential facts supporting the suspension or revocation of the licensee's driving priviliges have been judicially determined in the judicial proceedings had in connection with each conviction. The licensee had an opportunity to appear at each hearing and contest his liability. Under these circumstances, it is respectfully submitted that the Illinois statutory scheme affords drivers due process of law.

Additionally, even assuming that due process would otherwise require a preliminary hearing before suspension or revocation of driving privileges, there are factors involved here which would obviate the need for a hearing prior to revocation. In *Goss v. Lopez*, 419 U.S. 565, 42 L. Ed. 2d 725 (1975), this Court stated that there are recurring situations in which prior notice and hearing cannot be insisted upon. Such a situation was recognized to exist in an expulsion case when the presence of certain students posed a continuing danger to persons or property. Revoking the license of an incompetent driver who endangers the lives of the public is a similar situation.

It is well-settled that agencies can take emergency action, where a danger to the public is present, without prior notice or a preliminary hearing. This Court has frequently upheld such action against attacks based upon deprivation of due process of law.[2] In *Bell v. Burson*, this Court recognized that emergency situations are an exception to the general rule requiring a preliminary hearing prior to suspension or revocation (402 U.S. 542). Although this Court found in *Bell* that failure to comply with a financial responsibility statute was not such an emergency situation, it is submitted that repeated convictions for violation of traffic laws do present an emergency situation sufficient to come within the exception discussed in *Bell v. Burson*.

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[2] See: *Morton v. Dow*, 525 F. 2d 1302 (10th Cir. 1975) (Administrator may revoke airworthiness certificate in an emergency without a hearing);

FTC v. Dean Foods Co., 384 U.S. 597, 16 L. Ed. 2d 802 (1966) (FTC may seek injunction against a merger pending administrative hearings);

Ewing v. Mytinger and Casselberry, Inc., 339 U.S. 594, 94 L. Ed. 1088 (1950) (drug with misleading labels may be seized pending a hearing).

Fahey v. Mallonee, 332 U.S. 245, 91 L. Ed. 2030 (1947) (conservator may take possession of failing bank prior to hearing);

North American Cold Storage Co. v. City of Chicago, 211 U.S. 306, 53 L. Ed. 195 (1908) (food unfit for human consumption may be summarily seized and destroyed).

Careless or negligent driving on our highways results in numerous serious injuries and deaths each year.[3] Several states have upheld suspensions or revocations of driver's licenses without a prior hearing, finding that a record of frequent driving violations constitutes an emergency situation. In *Broughton v. Warren*, 281 A. 2d

[3] In his concurring opinion in *Perez v. Campbell*, 402 U.S. 637, 29 L. Ed. 2d 233 (1971) Mr. Justice Blackmun pointed out that the "slaughter on the highways of this nation exceeds the death toll of all our wars." (402 U.S. at 657)

[402 US 672]

APPENDIX TO OPINION OF BLACKMUN, J.

MOTOR-VEHICLE DEATHS AND WAR DEATHS

From 1900 through 1969, motor-vehicle deaths in the U. S. totalled nearly 1,800,000. Deaths of U. S. military personnel in all wars are shown below. In making comparisons, it must be kept in mind that nearly everyone is exposed to motor-vehicle accidents but relatively few are exposed to war deaths.

U. S. MILITARY CASUALTIES IN PRINCIPAL WARS

War	Total	Battle	Others*	Nonfatal Wounds
Total	†1,146,000	643,052	†503,200	§1,540,000
Revolutionary War (1775–83)	4,435	4,435	N.A.	6,188
War of 1812 (1812–15)	2,260	2,260	N.A.	4,505
Mexican War (1846–48)	13,283	1,733	11,550	4,152
Civil War (1861–65)				
Union Forces	364,511	140,414	224,097	281,881
Confederate Forces	133,821	74,524	59,297	N.A.
Spanish-American War (1898)	2,446	385	2,061	1,662
World War I (1917–18)	116,708	53,513	63,195	204,002
World War II (1941–45)	407,316	292,131	115,185	670,846
Korean War (1950–53)	54,246	33,629	20,617	103,284
Viet Nam War (1961–69)	47,251	40,028	7,223	262,799

Source: Office of Secretary of Defense.
† Rounded.
* Includes deaths from disease, accidents, etc.
§ Incomplete and rounded. N. A. Not available.
Accident Facts 63, published by the National Safety Council (1970 ed.).
The same publication, page 59, discloses that the annual death toll for motor vehicle accidents in the United States has exceeded 52,000 in each of the last five calendar years. Thus, the *annual* motor vehicle carnage approximates the *total* number of lives lost during the entire Vietnam conflict beginning in 1961.

625 (Del. 1971) the Court upheld a statute authorizing immediate suspension of driving privileges, without a hearing, upon the commission of any offense for which conviction would result in mandatory revocation:

> Little formal proof is required of carnage on the highways. For present purposes the Court takes judicial notice of the fact that men, women and children are seriously injured or die on our highways as a result of manslaughter by automobile, as a result of driving while under the influence of intoxicating liquor or narcotic drug, and so on. Cf. Breithaupt v. Abram, 352 U.S. 432, 77 S.Ct. 408, 1 L.Ed.2d 448 (1957). Certainly there is a governmental interest, a very strong public interest, in promptly removing from the highways persons who engage in such conduct. The suspension of a driver's license, under the kind of statute and proceeding here involved, is not to punish the driver but to protect the public from those who have demonstrated that their driving presents a hazard to life and property. Bungardeanu v. England, 219 A.2d 104 (D.C.Ct.App. 1966). (281 A.2d at 629)

The Supreme Court of Wisconsin, in *Gleason v. Wisconsin Department of Transportation*, 61 Wis. 2d 562, 213 N.W. 2d 74 (1973) found that a precancellation hearing was not required where it had been demonstrated that the licensee's physical condition had resulted in a danger to the public:

> We are of the opinion that the information before the respondent at the time of the issuance of the cancellation order presented an emergency situation well within the pronouncement of *Bell, supra*. When petitioner's driving record disclosed two episodes of unconsciousness within a few months, while driving, and which resulted in automobile collisions, such record presented an emergency situation and

any procedural due process requirements for a pre-cancellation hearing were obviated. (213 N.W. 2d at 79)

In *Cox v. Hjelle, supra*, the Supreme Court of North Dakota found that there was an emergency situation obviating the necessity for a presuspension hearing where the licensee was shown to have been convicted of four speeding offenses within a two-year period. The Court stated:

> The record in the case before us establishes that there were reasonable grounds under the statute for the decision which the Commissioner rendered. The licensee had been convicted four times, after full opportunity for hearing in each case. Where the driving record of the petitioner discloses four convictions involving movement of a vehicle upon the public highways within the preceding two-year period, such driving record constitutes an emergency situation which obviates the necessity for a presuspension hearing. Suspension in such case does not contravene the Due Process Clause of the Fourteenth Amendment of the United States Constitution. State v. Harm, 200 N.W.2d 387 (N.D.1972); State v. Sinner, 207 N.W.2d 495 (N.D.1973). (207 N.W. 2d 270)

Where a licensee's driving record reveals continued convictions for moving violations so as to indicate "a disrespect for the traffic laws" and "a disregard for the safety of other persons on the highway" (§ 6-206(a)(2)), this situation constitutes an emergency which obviates the necessity for a presuspension or a prerevocation hearing. In the instant case plaintiff's driving record is replete with convictions for traffic violations. Under these circumstances, an emergency situation exists bringing the instant case within the exception noted in *Bell v. Burson.*

CONCLUSION

For the foregoing reasons, Appellant respectfully urges this Honorable Court to reverse the judgment of the three-judge district court which permanently enjoined the enforcement of the Illinois statute on the ground that it violates due process of law.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DENNIS N. LOVE, individually and on behalf of all others similarly situated, *Plaintiff*, v. MICHAEL J. HOWLETT, Secretary of the State of Illinois, in his official capacity, *Defendant.*	No. 75 C 1821

Before TONE, Circuit Judge, and McLAREN and McGARR, District Judges.

MEMORANDUM OPINION AND ORDER

McGARR, District Judge. The plaintiff in this suit raises a substantial issue as to the constitutionality of Ill. Rev. Stat. Ch. 95½, § 6-206(a)(3), and seeks to enjoin the enforcement thereof. Accordingly, a three-judge court has been convened pursuant to 28 U.S.C. §§ 2281 and 2284. The following is the opinion of that court.

The plaintiff, Dennis M. Love, seeks to enjoin the defendant, Michael J. Howlett, from revoking the driver's license of the plaintiff and others similarly situated, with-

out a hearing prior to revocation. This practice is alleged to be in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. Plaintiff additionally states a claim under 42 U.S.C. § 1983. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1343, 1331, 2201 and 2202.

The defendant has filed a motion to dismiss supported by material extraneous to the pleadings. This motion will be taken as a motion for summary judgment under Rule 12(b), Fed. R. Civ. P. The plaintiff has filed a cross motion for summary judgment. The parties have briefed the issues and their motions will be considered simultaneously.

The facts in this particular action are as follows. The plaintiff, a truck driver, was issued citations for violations of traffic laws on three occasions pertinent to this suit. Prior to these citations, his license had been suspended for a time on March 17, 1970, and on October 22, 1969. He was convicted on the first citation on September 6, 1974. He was convicted on the second on November 21, 1974. On March 27, 1975, plaintiff was notified by letter that a further conviction would result in loss of his driving privileges. The third citation had been issued to the plaintiff on February 12, 1975, and his subsequent conviction occurred on March 31, 1975.

On June 3, 1975, plaintiff received a notice from the office of the Secretary of State that his license to operate a motor vehicle had been revoked effective June 6, 1975. The revocation was effected pursuant to the statute in issue here, Ill. Rev. Stat. Ch. 95½, § 6-206(a)(3). The reason for revocation stated on the notice was plaintiff's "having been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates disrespect for the traffic laws."

On June 6, 1975, upon application by the plaintiff, this court issued a temporary restraining order against the Secretary of State pending a resolution of the issues presented in the complaint filed June 5, 1975. The order was conditioned on plaintiff's application for a hardship driver's license. Plaintiff applied for such license on June 10, 1975, and was issued such a license on July 25, 1975.

Plaintiff's attack on the constitutionality of the statute has three aspects. The main thrust of the attack is directed to the failure of the statute to provide adequate notice and hearing to affected parties prior to suspension or revocation of their driver's licenses. Additionally, plaintiff challenges the statute as unconstitutionally vague in that it fails to establish adequate guidelines to be followed by the Secretary of State in suspension or revocation of licenses pursuant to its provisions. Lastly, the statute allegedly fails to inform the plaintiff of standards used by the Secretary of State for the suspension and revocation of drivers' licenses.

Illinois Revised Statutes Ch. 95½, § 6-206(a)(3) provides:

> "(a) The Secretary of State is authorized to suspend or revoke the license or permit of any person without preliminary hearing upon a showing by his records or other sufficient evidence that such person:
>
> • • •
>
> 3. Has been repeatedly involved as a driver in motor vehicle collisions or has been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle or disrespect for the traffic laws and the safety of other persons upon the highway. . . ."

It is patent that the statute authorizes the suspension or revocation of a driver's license without any preliminary hearing.

The Supreme Court has stated unequivocally that driver's licenses, once issued, "are not to be taken away without that procedural due process required by the Fourteenth Amendment." *Bell* v. *Burson,* 402 U.S. 535, 539 (1971), citing *Sniadach* v. *Family Finance Corp.,* 395 U.S. 337 (1969), and *Goldberg* v. *Kelly,* 397 U.S. 254 (1970). The question remains as to what procedural due process is required in the instant case.

The defendant contends that this case is distinguishable from *Bell* v. *Burson, supra.* In *Bell* v. *Burson,* the State of Georgia suspended the driver's license of an uninsured motorist who was involved in an accident because of his failure to meet the State's financial responsibility requirement. No hearing was accorded the petitioner on the issue of whether or not he was liable for any damages as a result of the accident. The State's interest in protecting a claimant from the possibility of an unrecoverable judgment was held to be insufficient to justify depriving its citizens their right to due process, in that case defined as the right to a hearing on the issue of fault.

In the instant suit, it is argued, there is no determination of fault made prior to hearing. The only factors entering into the Secretary's decision are the number of convictions on a driver's record, each conviction obtained after opportunity was afforded plaintiff to contest same. This argument is based on the regulations promulgated by the Secretary, which provide that:

> "A person repeatedly involved in collisions or convictions to a degree which indicates the lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle, or whose record indicates disrespect for traffic laws and the safety of other persons on the highway, and who has accumulated sufficient points to warrant a second suspension within a 5-year period, may either be suspended or revoked by the Secretary of State, based on the number of points[1] in his record. A person who has been suspended thrice in a ten-year period shall be revoked."

Defendant maintains that the action of the Secretary is automatic under these guidelines and that a hearing is unnecessary to determine fault. The only purpose to be served by a hearing would be the authentication of the record or of the identity of the driver.

Assuming, as defendant suggests, that the plaintiff had adequate time to contest the authenticity of his record, he has still been denied procedural due process. The statute allows the Secretary a great deal of discretion in taking the action he deems necessary to protect the public from unsafe drivers. Furthermore, neither the statute nor the regulation provides that suspension or revocation of a license follows automatically from conviction of a given number of traffic offenses of certain types. The statute makes suspension or revocation dependent on a determination of whether the driver's repeated involvement in collisions or conviction of offenses indicates lack of ability to use due care or disrespect for the traffic laws and the safety of others. The regulation makes suspension or revocation dependent *both* on such a determination *and* the accumulation of a given number of points, and even then the Secretary "may" but is not required to suspend or

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1. A system of assigning points to various violations has been prescribed by the Secretary in the regulations.

revoke the driver's license. Only when a driver has been suspended thrice in a ten-year period is the Secretary's action made mandatory.[2] Apparently in practice the accumulation of points is the only fact which is considered in determining whether to suspend or revoke, but neither the statute nor the regulation sanctions the disregard of the conditions of lack of ability to use due care or disrespect for traffic laws and the safety of others. So long, at least, as Illinois law makes a determination of the existence of such lack of ability or disregard a condition to revocation or suspension, a licensee must be given a hearing on those issues before his license can be suspended or revoked.

The defendant argues further that *Bell* v. *Burson* is distinguishable in that the governmental interest protected by the statute in issue in that case was inferior to that in the instant case. In the instant case, the state's interest is "the protection of the public health and safety on its highways." We agree with our brothers in the Western District of Pennsylvania that this "legislation is an intelligent and commendable effort to diminish the carnage on our highways by focusing attention on the most common cause of accidents, the careless and code-violating driver." *Reese* v. *Kassab,* 334 F. Supp. 744 (1971). However, we also agree with their ultimate conclusion that in pursuing this interest the state must also accommodate the individual's right to procedural due process."

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2. In the instant case, had plaintiff's license been suspended instead of revoked, he would have then been subject to the mandatory revocation provision. Since a suspension requires the same due process safeguards as does a revocation, the defendant's elimination of a step in the revocation process is immaterial to the ultimate determination of the issues in this case.

Finally, we disagree with the defendant's argument that this is an "emergency situation" specifically excepted from the holding in *Bell* v. *Burson.* As an indication that this is not such an emergency situation, we point out that in at least one situation where suspension or revocation is allowed, the state furnishes a hearing before taking such action. Ill. Rev. Stat. Ch. 95½ § 6-206(a)(17). Furthermore, under Ill. Rev. Stat. Ch. 95½ § 6-205, which mandates revocation for certain offenses, such as manslaughter or driving while intoxicated, the revocation is effected only after conviction of the underlying offense.[3] A fault determination being the only distinguishing characteristic of § 6-205, it follows that, in view of the state's regulatory scheme, no emergency situation exists in this case.

In further contravention of the defendant's argument that an "emergency situation" exists is the length of time involved in the instant case between plaintiff's final conviction and his ultimate revocation. Even taking the defendant's position that the conviction was not finalized until 30 days had transpired, a period of almost a month elapsed before plaintiff was sent his notice of revocation. This period of time, while not extreme, affords ample opportunity for a hearing.

We therefore conclude that the practice of the Secretary of State whereby operator's licenses are suspended or revoked under Chapter 95½ § 6-206(a)(3) of the Illinois

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3. The counterargument of defendant that a hearing on the issue of fault is necessary before mandatory revo-

Revised Statutes is unconstitutional by virtue of its failure to provide the affected party notice and adequate opportunity to be heard.

In view of our holding on the issue of procedural due process, we need not reach the issue of the substantive unconstitutionality of the Act in question.

Accordingly, plaintiff's motion for summary judgment is granted as to Count I of the complaint. Count II is rendered moot by this decision.

ENTER:

/s/ PHILIP W. TONE
Philip W. Tone, Judge
United States Court of Appeals

/s/ RICHARD W. McLAREN
Richard W. McLaren, Judge
United States District Court

/s/ FRANK J. McGARR
Frank J. McGarr, Judge
United States District Court

DATED: January 20, 1976

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cation under § 6-205, whereas no fault determination need be made under § 6-206(a)(3), has been discussed previously.

APPENDIX B

Illinois Revised Statutes 1975, Chapter 95½, Section 6-206, provides:

6–206. § 6–206. Discretionary authority to suspend or revoke license or permit—Right to a hearing. (a) The Secretary of State is authorized to suspend or revoke the license or permit of any person without preliminary hearing upon a showing by his records or other sufficient evidence that such person:

1. Has committed an offense for which mandatory revocation of license or permit is required upon conviction;

2. Has been convicted of not less than 3 offenses against traffic regulations governing the movement of vehicles with the exception of those offenses excluded under the provisions of Section 6–204(2), committed within any 12 month period so as to indicate the disrespect for traffic laws and a disregard for the safety of other persons on the highways; conviction upon 3 charges of violation of Section 11–601 of this Act committed within a period of 12 months shall be deemed grounds for the revocation or suspension of a license or permit under this Section, provided that no such revocation or suspension shall be entered more than 6 months subsequent to the date of conviction of the 3rd offense;

3. Has been repeatedly involved as a driver in motor vehicle collisions or has been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle or disrespect for the traffic laws and the safety of other persons upon the highway;

4. Has by unlawful operation of a motor vehicle caused or contributed to an accident resulting in death or injury to any person, except that any action taken by the Secretary of State under the provisions of this sub-section shall be confined to a period of 6 months after a conviction of the unlawful operation of a violation of a law or ordinance regulating the movement of traffic, which violation is related to such accident, or to a period of not more than one year subsequent to the date of said accident, whichever period terminates later;

5. Has permitted an unlawful or fraudulent use of such license or permit;

6. Has been lawfully convicted of an offense in another State which if committed within this State would be grounds for suspension or revocation;

7. Has refused or failed to submit to an examination provided for by Section 6–207 of this Act or has failed to pass such examination;

8. Is ineligible for such license or permit under the provisions of Section 6–103 of this Act;

9. Has made a false statement or knowingly concealed a material fact in any application for a license or permit;

10. Has displayed or represented as his own any license or permit not issued to him;

11. Has operated a motor vehicle upon a highway of this State when his drivers license or permit or privilege so to do or privilege to obtain a license or permit under this Act was revoked or suspended unless the operation was authorized by a restricted driving permit issued pursuant to this Act;

12. Has submitted to an examination or has obtained the services of another person to submit to an examination for the purpose of obtaining a drivers license or permit for some other person;

13. Has operated a motor vehicle upon a highway of this State when his drivers license was invalid under the provisions of Section 6–110 of this

Act. Provided that for the first such offense the Secretary of State may suspend such license or permit not more than 60 days, for the second such offense not more than 90 days, and for the third such offense not more than 1 year;

14. Has been convicted of any violation of Section 6–301;

15. Has violated Section 21–2 of the Criminal Code of 1961 [1] relating to criminal trespass to vehicles in which case, the suspension shall be for one year;

16. Has violated Section 11–204 of this Act relating to fleeing from a police officer;

17. Has refused to submit to a test as required under Section 11–501.1 of this Act and such person has not sought a hearing as provided for in Section 11–501 of this Act;

18. Has, since issuance of a license or permit, been adjudged to be afflicted with or suffering from any mental disability or disease.

(b) If any conviction forming the basis of a suspension or revocation authorized hereunder is appealed, the Secretary of State may rescind or withhold the entry of the order of suspension or revocation, as the case may be, provided that certified copy of a supersedeas or other stay order is filed with the Secretary of State. If such conviction is affirmed on appeal, the date of the conviction shall relate back to the time the original judgment of conviction was entered and the 6 month limitation hereinabove prescribed shall not apply.

(c) 1. Upon suspending or revoking the license or permit of any person as authorized in this Section, the Secretary of State shall immediately notify such person in writing of the order revoking or suspending the license or permit. Such notice to be deposited in the United States mail, postage prepaid, to the last known address of such person.

2. If the Secretary of State suspends or revokes the license of a person under sub-paragraph 2 of paragraph (a) of this Section, a person's license to drive a commercial vehicle only as an occupation shall not be revoked or suspended unless 5 offenses were committed, at least 2 of which occurred while operating a commercial vehicle in connection with his regular occupation. Within 25 days after the mailing of a notice of suspension or revocation by the Secretary of State, any such driver may submit an affidavit on forms to be provided by the Secretary of State setting forth the facts of his employment as a driver of a commercial vehicle. The affidavit shall also state the number of offenses committed while driving a commercial vehicle in connection with his regular employment or occupation. The affidavit shall be accompanied by his driver's license which shall be suspended by the Secretary of State who shall thereupon send to said driver a permit to drive a commercial vehicle in his regular occupation. Unless such affidavit is properly completed by the driver and received by the Secretary of State within such 25 day period, such driver's license to drive any motor vehicle shall be revoked or suspended as set forth in the notice that was mailed pursuant to subparagraph 2 of paragraph (c) of this Section. The Secretary may revoke or suspend the license of such person to drive any vehicle other than a commercial vehicle in connection with his regular occupation upon notice of conviction of not less than 3 offenses against traffic regulations governing the movement of vehicles with the exception of those offenses excluded under Section 6–204(2), committed within any 12 month period so as to indicate the disrespect for traffic laws and a disregard for the safety of other persons on the highways.

In lieu of the affidavit provided for above, the driver may request a hearing pursuant to Section 2–118 of this Act.

Any person who falsely states any fact in the affidavit required herein shall be guilty of perjury under Section 6–302 of this Act and upon conviction thereof shall have his driver's license revoked without further rights under this sub-paragraph 2.

3. At the conclusion of a hearing pursuant to Section 2–118, the Secretary of State shall either rescind or continue an order of revocation or shall substitute an order of suspension therefor; or, good cause appearing therefor, rescind, continue, change or extend his order of suspension. If the Secretary of State does not rescind his order, he may upon application therefor, to relieve undue hardship, issue a restricted driving permit granting the privilege of driving a motor vehicle between the residence and the place of employment of such person or within other proper limits. In each case the Secretary may issue such restricted driving permit for such period as he deems appropriate, except that such permit shall expire within one year from the date of issuance. A restricted driving permit issued hereunder shall be subject to cancellation, revocation and suspension by the Secretary of State in like manner and for like cause as a drivers license issued hereunder may be cancelled, revoked or suspended; except that a conviction upon one or more offenses against laws or ordinances regulating the movement of traffic shall be deemed sufficient cause for the revocation or suspension of a restricted driving permit.

(d) This Section is subject to the provisions of the Drivers License Compact.[2]

Amended by P.A. 77–2739, § 1, eff. Oct. 1, 1972; P.A. 78–663, § 1, eff. Jan. 1, 1974.

[1] Chapter 38, § 21–2.
[2] Chapter 95½, § 6–700 et seq.

APPENDIX C

Rule 6-206 of the Rules and Regulations under the Illinois Vehicle Code, in relevant part provides:

RULE 6-206(a) — Discretionary authority to suspend or revoke a license or permit.

The Secretary of State is authorized to exercise discretionary authority to suspend or revoke driving privileges and the evidence thereof without a preliminary hearing, or to decline to suspend or revoke such driving privileges. In making a determination of the action to be taken, the Secretary of State shall take into consideration the severity of the offense and conviction, the number of offenses and convictions, and prior suspensions or revocations on the abstract of the driver's record. The Secretary may also take into consideration the points accumulated by the driver and noted on his driving record.

For the purpose of this Rule and its companion rules, a conviction is the final adjudication of "guilty" by a court of competent jurisdiction, either after a bench trial, trial by jury, plea of guilty, order of forfeiture, or default, as reported to the Secretary of State, and the Secretary of State is not authorized to look behind the conviction.

The provisions of this Rule and its companion rules are subject to the provisions of the Drivers License Compact.

Upon the suspension or revocation of a license, the affected driver may make a written request to the Secretary of State for an administrative hearing pursuant to Section 2-118 of the CODE, and any final order resulting therefrom shall be subject to judicial review.

The procedures to be followed shall be identical for those provided under Rule 7-101 [Administration of Hearings] and shall assure the affected driver of his Constitutional rights to due process of law and equal protection under the law.

Attached hereto, made a part hereof, is the following:

Point system promulgated by the Secretary of State to Rule 6-204 [not reproduced].

RULE 6-206(a)1 — Offenses where mandatory revocation is possible.

When a driver has committed an offense for which mandatory revocation of license or permit is required upon conviction, the Secretary may either suspend or revoke said license or permit.

RULE 6-206(a)2 — 3 traffic offenses within 12 months.

A person who has been convicted of three (3) or more offenses against traffic regulations, governing the movement of vehicles, with the exception of those offenses excluded under provisions of Section 6-204(2) and whose violations have occurred within a twelve (12) month period may be suspended as follows:

Number of Points	*Action*
20 to 44	Suspension up to 2 months
45 to 74	Suspension up to 3 months
75 to 89	Suspension up to 6 months
90 to 99	Suspension up to 9 months
100 to 109	Suspension up to 12 months
Over 110	Revocation for not less than 12 months.

RULE 6-206(a)3 — Repeated convictions or collisions.

A person repeatedly involved in collisions or convictions to a degree which indicates the lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle, or whose record indicates disrespect for traffic laws and the safety of other persons on the highway, and who has accumulated sufficient points to warrant a second suspension within a 5 year period, may either be suspended or revoked by the Secretary of State, based upon the number of points in his record. A person who has been suspended thrice within a 10 year period shall be revoked.